IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 729 of 2004(A)

CRA.480/2001 of ADDL.SESSIONS COURT, KOZHIKODE
CC.12/1997 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

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REVN. PETITIONER: APPELLANT/ACCUSED:

M.N. PUSHPAVALLY, W/O. VIJAYARAGHAVAN
`PUSHPA BHAVAN', PERUMUGHAM, P.O. FEROKE,
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:

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1. K. LAKSHMANAN, S/O. KARI,
1PRABHA NIVAS', AYKKARAPPADY, MALAPPURAM.

2. STATE OF KERALA, REP. PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 729OF 2004 A

Dated this the 16th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.12/97 on the file of the J.F.C.M.-V, Kozhikode challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have

considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided she complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.1,00,000/- (Rupees one lakh only) within one month from today, then she need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, she shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

5. As per the interim order dated 11.8.04, this court had directed the revision petitioner to deposit Rs.50,000/- (Rupees fifty thousand only) out of the cheque amount of Rs.1,00,000/- (Rupees one

lakh only) on or before 23.8.04 and to deposit the entire balance amount within a period of one month from that date. Both sides are unable to say whether this amount so directed has been deposited. If the revision petitioner has complied with the said order, then the 1st respondent complainant shall be entitled to withdraw the amount lying in deposit and the revision petitioner need only undergo imprisonment till rising of the court. If on the contrary, the revision petitioner has not deposited the entire cheque amount either wholly or partly, she shall deposit the sum within one month from today, failing which she shall undergo simple imprisonment for two months by way of default sentence. The 1st respondent complainant shall be entitled to withdraw the amount, if any, already deposited and the amount to be deposited.

This Revision is disposed of modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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